



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 5947499

Date: NOV. 26, 2019

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a foreign investment consultant, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

For the reasons discussed below, we withdraw that the Director's finding that the Petitioner qualifies as a member of the professions holding an advanced degree. In order to show an individual is a professional holding an advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, the Petitioner may present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner presented a "Certificate in Business Management" (2007) he received from [redacted] University, [redacted] in recognition of his "successful completion of a Master of Business Administration (MBA) *Foundation Program*" (emphasis added). He also provided an academic transcript listing the various introductory business courses that he completed as part of [redacted]'s "Foundation Program," but this transcript and the aforementioned certificate do not indicate that he received an MBA degree from that university. With respect to the Petitioner's completion of an MBA Foundation Program, this pre-MBA curriculum helps students develop the professional and academic

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

qualities that are necessary for admission into an MBA program. It prepares students to cope with the MBA degree curriculum and build a foundation which they can build upon to pursue an MBA. Here, the Petitioner's evidence does not establish that his "Certificate in Business Management" from [] constitutes a U.S. advanced degree or a U.S. baccalaureate degree.

In addition, the Petitioner submitted a certificate stating that he received a Ph.D. in economics from the Academy of Sciences of [] (1994), a credential from [] State University [] of Economics indicating that he "is qualified as an economist" (1995), and a diploma from []. [] State University stating that he received "a graduate degree as Orientalist/Historian and History Teacher Versed in Arabic" (1990). The aforementioned Ph.D. certificate, economist credential, and diploma were unaccompanied by the Petitioner's official academic record from each university and a credentials evaluation indicating that they were the foreign equivalent of a U.S. advanced degree or a U.S. baccalaureate degree. Accordingly, the Petitioner has not offered sufficient evidence demonstrating that he qualifies as a member of the professions holding an advanced degree.

B. Exceptional Ability

The Petitioner also maintains that he meets three of the regulatory criteria for classification as an individual of exceptional ability: 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (F). Upon review, we find that the Petitioner's Certificate in Business Management from [] and letters from employers meet the requirements of the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B).

With respect to the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), the Petitioner offered recommendation letters from various individuals describing his education and work experience, but this evidence was not sufficient to demonstrate "recognition for achievements and significant contributions to the industry or field." For example, the record includes letters from [] (a controller with []) and [] (director and controller for []) discussing the Petitioner's employment history and economic workshops, but they did not offer specific examples of how his work was recognized as significant contributions to the financial services industry or foreign investment field. The evidence therefore does not establish that the Petitioner satisfies at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification.

C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. The Director determined that the Petitioner had not met any of three prongs set forth in the *Dhanasar* analytical framework.

Regarding the Petitioner's claim of eligibility under *Dhanasar*'s first prong, he stated that his proposed endeavor involves consulting "U.S. businesses and private entrepreneurs on matters related to corporate finance in post-Soviet Central Asian republics." He asserted that his undertaking aimed at advising "U.S. businesses intending to work or working in this region will benefit the U.S. economy nationwide by allowing businesses from across the U.S. to work successfully in this challenging region." The Petitioner further explained that his endeavor seeks to attract American investment in Uzbekistan and create joint Uzbek-American companies in various sectors of Uzbekistan's economy.

The Petitioner provided information about the American-Uzbekistan Chamber of Commerce, business opportunities for U.S. companies in Uzbekistan, and Uzbekistan's natural resources. In addition, he submitted letters from colleagues discussing general investment opportunities available in Central Asian markets and the economic and political benefits associated with those opportunities. The record therefore shows that the Petitioner's endeavor has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

On appeal, the Petitioner maintains that he "plans to engage in attracting U.S. investments into the Uzbek economy and in creation of joint Uzbek-American companies." He contends that his proposed endeavor will link "U.S. business and investment institutions to Uzbekistan market opportunities via his cooperation with the American-Uzbekistan Chamber of Commerce." The Petitioner further states that he "intends to promote investment opportunities to attract U.S. investment to Uzbekistan." In addition, he asserts that his proposed work will benefit the United States through trade access to Uzbek natural resources, allocating U.S. production of consumer goods to Uzbekistan based on that country's lower labor costs, investment returns and profit margins as a result of lower raw material costs, and investment income associated with economic privileges and tax exemptions.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner's statements reflect his intention to provide valuable investment services for his future clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clients to impact the U.S. foreign investment industry more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not

demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding degree or as an individual of exceptional ability. Furthermore, as the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.